

10/772,766  
Amendment

REMARKS

Claims 1, 13, 26, 46, and 48 have been amended. Forty-one claims remain pending in the application: Claims 1-11 and 13-38 and 46-49. Reconsideration of claims 1-11 and 13-38 and 46-49 in view of the remarks below is respectfully requested.

Support for the amendments made hereinabove may be found in the application as originally filed at least at page 10, lines 3 through 15 and figure 3.

Request for Examiner Interview

Applicants note with appreciation the Examiner's previous indication that an Examiner interview will be granted before the issuance of a first office action. Applicants will contact the Examiner for the purpose of scheduling such an interview shortly after the submission of the response herein.

Election/Restrictions

Applicants note with appreciation the Examiner's indication that "if claim 13 is found to be a generic allowable claim then 1-11 and 46-49 will also be allowed."<sup>1</sup>

Claim Rejection under 35 USC § 102

1. Claims 13, 22, 26, and 35 stand rejected under 35 USC 102(b) as being anticipated by US Patent No. 1,314,356 of Nordblad (herein the '356 patent).

Applicants maintain, as set forth in Applicants' amendment of July 5, 2005, that the '356 patent describes a toe sock

<sup>1</sup> See page 2 of the OA mailed 9/2/2005

10/772,766  
Amendment

having toe pockets overlapping each other substantially along the entire length of the toe pocket, while in contrast, the present application teaches toe sections separated by trough regions where the overlapping portions are limited to the area where the toe sections intersect, i.e. at the apex.<sup>2</sup>

To clarify the distinction between the '356 patent and the pending application, Applicants previously amended the independent claims to include limitations directed to (1) toe sections separated by trough regions and (2) overlapping material limited to where the toe sections intersect.

In response to Applicants' amendments in the July 5, 2005 paper, the Examiner states, "[t]he claims as amended do not detail that the toe pockets cannot overlap along their entire length" and that the "toe pockets of Norblad do not overlap at their ends."<sup>3</sup> Furthermore, the Examiner states that the "definition of 'intersect' is to overlap."<sup>4</sup> Applicants have further amended independent claim 13 to address the Examiner's concerns and to more clearly distinguish the '356 patent.

First, Applicants' claim 13 has been amended to further define the "trough regions." Specifically, claim 13 now recites "the toe sections being separated by trough regions that each have an apex located where adjacent toe sections are joined." The '356 patent does not show or disclose this type of trough region. That is, the '356 patent does not disclose a trough region having an apex located where adjacent toe sections are joined. Instead, in the '356 patent, the apex of the region at the ends of the toe pockets where they do not overlap is not located where adjacent toe sections are joined. In fact, the apex of that region is located quite far from where adjacent toe

<sup>2</sup> See page 10, lines 11 to 13 of the pending application

<sup>3</sup> See page 9 of the OA mailed September 2, 2005

<sup>4</sup> See page 9 of the OA mailed September 2, 2005

10/772,766  
Amendment

sections are joined.

The Examiner asserts that the sock of the '356 patent has trough regions, which the Examiner identifies as "a long and narrow channel or depression..."<sup>5</sup> However, according to Applicants' specification, "trough sections [form] a V or angle that [intersects] at an apex."<sup>6</sup> Thus, Applicants' claimed "trough region" is quite different than the long and narrow channel or depression identified by the Examiner in the '356 patent.

Next, Applicants' claim 13 has been amended to more clearly define the location of the "nested, overlapping material portions." Specifically, the word "intersect" has been eliminated, and claim 13 now recites that the toe sections are joined by nested, overlapping material portions "only at the apex of each trough region." As mentioned above, the apex of each trough region is located where adjacent toe sections are joined. This means that Applicants' nested, overlapping material portions are located only where adjacent toe sections are joined. This is quite different than the '356 patent, which clearly shows toe pockets overlapping each other along most of the entire length of the toe pockets.

The Examiner states that "the amount of overlapping of the toe pockets is not critical."<sup>7</sup> But the '356 patent specifically teaches that the toe pockets overlap along the length of the stocking such that the stocking may be "applied to a foot having overlapping toes, that no distortion or twisting of the toe pockets will result, the fabric retaining its natural form."<sup>8</sup> In contrast, Applicants' specification indicates that the nested,

<sup>5</sup> See page 9 of the OA mailed September 2, 2005

<sup>6</sup> See page 10, lines 8 to 10 in the pending application

<sup>7</sup> See page 9 of the OA mailed September 2, 2005

<sup>8</sup> See column 2, lines 55 to 77 of the '356 patent

10/772,766  
Amendment

overlapping material portions are useful for "[eliminating] the uncomfortable lumpy feeling between the toes common to toe socks of the past."<sup>9</sup> Thus, it is important for Applicants' sock not to have toe pockets that overlap each other along most of the entire length of the toe pockets in order to eliminate the uncomfortable lumpy feeling between the toes. As such, the nested overlapping material portions in Applicants' claim 13 are limited to the apex of each trough region.

In conclusion, the '356 patent does not teach each and every limitation of amended claim 13, as well as independent claims 1, 26, 46, and 48, which have been amended in a manner similar to claim 13. As claims 22 and 35 depend from claims 13 and 26, it is respectfully requested that the present rejection be withdrawn from each of the claims 13, 22, 26, and 35.

Claim Rejections under 35 USC § 103

2. Claims 19, 20, 32, and 33 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad.

The Examiner concedes that the '356 patent does not disclose a heel section having a "generally bilaterally symmetric trapezoidal shape" as specified in claims 19, 20, 32, and 33 of the pending application. The Examiner further asserts that it would have been obvious to modify the stocking of the '356 patent to include a "generally bilaterally symmetric trapezoidal shape" because Applicant has not disclosed that such a heel "provides an advantage is [sic] used for a particular purpose, or solves a stated problem."<sup>10</sup> However, Applicant, in reference to the heel, discloses, "This construction provides an

<sup>9</sup> See page 10, lines 13 to 15 of the pending application

<sup>10</sup> See page 4 of the OA mailed September 2, 2005

10/772,766  
Amendment

anatomic, accurately sized, antislipping, good form fit to the natural shape of the wearer's heel, preventing the heel 34 of the sock from bunching up, slipping out of place, stretching, or rotating, preventing chaffing and blistering."<sup>11</sup> Thus, Applicants have specifically disclosed several purposes and advantages for a generally bilaterally symmetric trapezoidal shaped heel.

Furthermore, the '356 patent does not teach each and every limitation of the claimed invention. As described above, independent claims 13 and 26, from which claims 19, 20, 32, and 33 depend, recite a toe sock having "...toe sections to receive toes of the foot of the wearer, the toe sections being separated by trough regions that each have an apex located where adjacent toe sections are joined, the toe sections joined by nested, overlapping material portions only at the apex of each trough region."<sup>12</sup> As discussed above, the '356 patent does not disclose these limitations.

Thus, for at least the reasons presented above, as well as the arguments set forth in section one of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 19, 20, 32, and 33.

3. Claims 14, 15, 17, 18, 27, 28, 30, and 31 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 5,555,565 of Gallagher (herein the '565 patent).

Claims 14, 15, 17, 18, 27, 28, 30, and 31 are patentable over the '356 patent and the '565 patent because each and every limitation of the claimed invention is not taught by the '356

<sup>11</sup> See page 8, lines 19 to 26 of the pending application

<sup>12</sup> See claims 13 and 26 as amended

10/772,766  
Amendment

patent in combination with the '565 patent.

With regard to claim 15 and 28, the Examiner asserts that the '565 patent "teaches the sock including an interior and exterior portion including a greater or equal amount of hydrophobic fiber material than the exterior portion."<sup>13</sup> However, there is no mention in the '565 patent of a sock having variable hydrophobic fiber amounts according to the inner or outer portions of the sock. The text which the Examiner points to, i.e. column 3, lines 3 to 44, discloses the use of a "reversed terry nap construction" for providing "a smooth fit next to a skin."<sup>14</sup> Thus, the '565 patent provides that the same fiber is used on the interior and exterior of the sock, the only difference being the texture of the fiber in the interior versus the exterior of the sock.

With regard to claims 18 and 31, the Examiner concedes that neither the '356 nor the '565 patents teach a hydrophobic fiber material having "at least one of a tetra-channeled and hollow-core configuration." The Examiner asserts that modifying the sock of the '356 patent and the '565 patent with tetra-channels having a hollow-core configuration would have been an obvious choice.<sup>15</sup> As disclosed in the pending application, hollow-core fibers are useful for trapping warm air in the hollow-core for insulating the foot of the wearer.<sup>16</sup> Neither the '356 patent nor the '565 patent appreciates the use of hollow-core fibers for insulation purposes. In fact, the '565 patent teaches away from the use of a **hollow-core fiber** for the use of insulation and instead discloses the use of a **"high density reversed terry knit."**<sup>17</sup> The use of hollow-core fiber advantageously reduces

<sup>13</sup> See page 5 of the OA mailed September 2, 2005

<sup>14</sup> See column 3, lines 33 to 37 of the '565 patent

<sup>15</sup> See page 5 of the OA mailed September 2, 2005

<sup>16</sup> See page 5, lines 22 to 23 of the pending application

<sup>17</sup> See column 4, lines 9 to 10 of the '565 patent

10/772,766

Amendment

bulk of the sock as opposed to the high density reversed terry knit taught by the '565 patent.

With regard to each of claims 14, 15, 17, 18, 27, 28, 30, and 31, neither the '356 patent nor the '565 patent disclose "...toe sections to receive toes of the foot of the wearer, the toe sections being separated by trough regions that each have an apex located where adjacent toe sections are joined, the toe sections joined by nested, overlapping material portions only at the apex of each trough region."<sup>18</sup> As discussed above, the '356 patent does not disclose these limitations.

Thus, for at least the reasons presented above, as well as the arguments set forth in section one of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 14, 15, 17, 18, 27, 28, 30, and 31.

4. Claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 4,898,007 of Dahlgren (herein the '007 patent).

Claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37 are patentable over the '356 patent and the '007 patent because each and every limitation of the claimed invention is not taught by the '356 patent in combination with the '007 patent.

With regard to each of claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37, neither the '356 patent nor the '007 patent disclose "...toe sections to receive toes of the foot of the wearer, the toe sections being separated by trough regions that each have an apex located where adjacent toe sections are joined, the toe sections joined by nested, overlapping material

<sup>18</sup> See claims 13 and 26 as amended

10/772,766  
Amendment

portions only at the apex of each trough region."<sup>19</sup> As discussed above, the '356 patent does not disclose these limitations.

Thus, for at least the reasons presented above, as well as the arguments set forth in section one of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37.

5. Claims 25 and 38 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 4,898,007 of Dahlgren, and further in view of US Patent No. 4,958,507 of Allaire et al (herein the '507 patent).

Claims 25 and 38 are patentable over the combination of the '356 patent, the '007 patent, and the '507 patent because each and every limitation of the claimed invention is not taught by the combination of the three patents.

With regard to claims 25 and 38, the combination of the '356 patent, '007 patent, and '507 patent do not disclose "...toe sections to receive toes of the foot of the wearer, the toe sections being separated by trough regions that each have an apex located where adjacent toe sections are joined, the toe sections joined by nested, overlapping material portions only at the apex of each trough region."<sup>20</sup> As discussed above, the '356 patent does not disclose these limitations.

Thus, for at least the reasons presented above, as well as the arguments set forth in section one of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 25 and 38.

<sup>19</sup> See claims 13 and 26 as amended

<sup>20</sup> See claims 13 and 26 as amended



10/772,766  
Amendment

Claims Withdrawn by the Examiner

Claims 1, 46, and 48 have been amended to place them in condition for allowance. Although the Examiner has indicated that claims 1, 46, and 48 have been withdrawn from consideration, Applicants believe that claim 13 is generic to these claims, thus, have amended the claims to expedite issuance of all of claims 1-11 and 13-38 and 46-49.

Fees Believed to be Due

The director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 06-1135.

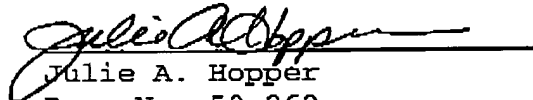
10/772,766  
Amendment

**CONCLUSION**

Applicants submit that the amendments and remarks provided herein place the pending claims in condition for allowance, including claims 1-11 and 46-49 which the Examiner has indicated are withdrawn from the application. Therefore, a Notice of Allowance is respectfully requested. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard E. Wawrzyniak at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

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